

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36614

STATE OF IDAHO,)	2010 Unpublished Opinion No. 377
)	
Plaintiff-Respondent,)	Filed: March 10, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
ANN HORACK,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Gregory M. Culet, District Judge.

Appeal from order denying motion for reconsideration of denial of I.C.R. 35 motion for reduction of sentence, dismissed.

Molly J. Huskey, State Appellate Public Defender; Sara B. Thomas, Chief, Appellate Unit, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge; GUTIERREZ, Judge;
and MELANSON, Judge

PER CURIAM

Ann Horack pled guilty to presentation of illegally obtained lottery tickets. I.C. § 67-7448. In exchange for her guilty plea, additional charges were dismissed and the state agreed not to file other charges. The district court sentenced Horack to concurrent unified terms of five years, with minimum periods of confinement of two years, but retained jurisdiction. Horack filed an I.C.R. 35 motion, which the district court denied. Following Horack's rider, the district court relinquished jurisdiction. However, Horack thereafter filed a motion for reconsideration of the denial of her Rule 35 motion, which the district court also denied. Horack appeals. Horack argues that, despite the denial of her first Rule 35 motion, the district court should have reconsidered its order relinquishing jurisdiction.

A notice of appeal must be filed within forty-two days of the date of filing of the order or judgment from which the appeal is taken. I.A.R. 14. This requirement is jurisdictional. *State v. Tucker*, 103 Idaho 885, 888, 665 P.2d 92, 95 (Ct. App. 1982). Horack did not appeal from the order relinquishing jurisdiction or the order denying her Rule 35 motion. Therefore, her challenges with regard to these orders is not timely.

Furthermore, the filing of the motion to reconsider the district court's Rule 35 ruling did not extend the time. A motion to reconsider does not toll the time for the filing of appeal under I.A.R. 14. *State v. Nelson*, 104 Idaho 430, 431, 659 P.2d 783, 784 (Ct. App. 1983). Horack's appeal of the district court's decision denying her Rule 35 motion was not filed within forty-two days of the district court's order as required by Rule 14. Horack attempts to challenge the district court's order denying her motion for reconsideration. This prohibition is a jurisdictional one. In *State v. Bottens*, 137 Idaho 730, 732-33, 52 P.3d 875, 877-78 (Ct. App. 2002), this Court stated:

Today we make explicit that a motion to reconsider the denial of a Rule 35 motion is an improper successive motion and is prohibited by Rule 35. We hold that the prohibition of successive motions under Rule 35 is a jurisdictional limit. Thus, the trial court in the instant case did not have jurisdiction to hear Bottens' motion to reconsider

Because the district court lacked jurisdiction to consider Horack's motion to reconsider, her appeal from the district court's denial must be dismissed. Therefore, Horack's appeal from the district court's order denying her motion for reconsideration is dismissed.